



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/070,176

Confirmation No.: 2983

Applicant(s): Durand et al.

Filed: May 22, 2002

Art Unit: 1651

Examiner: Herbert J. Lilling

Title: USE OF OYSTER FLESH ENZYMATIC HYDROLYSATES FOR
PREPARING COMPOSITIONS ELIMINATING FREE RADICALS

Docket No.: 033339/244371

Customer No.: 00826

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ELECTION WITH TRAVERSE

Sir:

In response to the Requirement for Restriction dated February 27, 2004, Applicant requests reconsideration by the Examiner as set forth more fully below.

The Examiner has required restriction to one of the following inventions under 35 U.S.C.

§ 121:

- I. Claims 1-11 drawn to a method for preparing a free radical scavenging composition;
- II. Claims 13-14 and 19 drawn to a pharmaceutical composition comprising a free radical scavenging composition;
- III. Claims 15-16 and 20 drawn to a food supplement comprising a free radical scavenging composition; and
- IV. Claims 17-18 and 21 drawn to a cosmetic composition comprising a free radical scavenging composition.

In order to fully comply with the Official Action, Applicant provisionally elects Group I, namely Claims 1-11. However, this requirement for restriction is respectfully traversed.

The Examiner is making this requirement for restriction in accordance with United States restriction practice. However, this application is a national phase (371) application and, therefore, unity of invention practice, not restriction practice, is applicable. *See MPEP § 1893.03(d).* Furthermore, the Examiner has failed to substantiate the grounds for restriction, either under United States restriction practice or under unity of invention practice.

Applicant submits that the allegedly separate inventions as defined by the Examiner are linked to form a single inventive concept involving at least one common or corresponding special technical feature. In particular, all of the claims involve either the preparation or use of a free radical scavenging composition involving an enzymatic oyster hydrolysate. Accordingly, there is unity of invention among the various groups of claims. The Examiner is requested to reconsider and withdraw the requirement for restriction and to proceed with an examination on the merits of Claims 1-11 and 13-21 as now presented.

Should the Examiner refuse to proceed with an examination on the merits of all of the claims of this application, then it is requested that the claims of Group III directed to the food supplement be examined along with the claims of Group I drawn to the method of preparing a free radical scavenging composition. Under 37 CFR 1.475(b), a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to a product, a process specially adapted for the manufacture of the product, and a use of the product. Thus, Claims 1-11 drawn to the method of preparing the free radical scavenging composition clearly have unity of invention with Claims 15-16 and 20, which are directed to a use of the free radical scavenging composition as a food supplement.

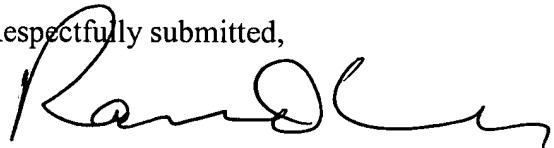
Finally, in response to the Examiner's election of species requirement (paragraph 4 of the Official Action), Applicant provisionally elects the food supplement specie and wherein the protease is subtilisin.

This requirement is respectfully traversed. The species outlined by the Examiner are linked to form a single inventive concept for the reasons set forth more fully above. All involve the use of an enzymatic oyster hydrolysate.

For the reasons noted, Applicant's request reconsideration by the Examiner and withdrawal or modification of the restriction and election requirements.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

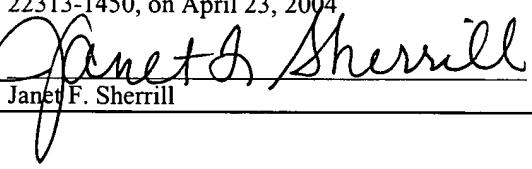


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 23, 2004.


Janet F. Sherrill